

**United States Department of Labor
Employees' Compensation Appeals Board**

K.G., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
HEALTH RESOURCE CENTER, Topeka, KS,
Employer**

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) **Docket No. 18-1233**
) **Issued: March 1, 2019**
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 1, 2018 appellant filed a timely appeal from an April 16, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from the last merit decision, dated March 17, 2017, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On April 15, 2016 appellant, then a 36-year-old contact representative, filed an occupational disease claim (Form CA-2), alleging that he developed an emotional condition while in the performance of duty. He indicated that he first became aware of his claimed condition and

¹ 5 U.S.C. § 8101 *et seq.*

realized its relation to his federal employment on February 22, 2016. Appellant alleged that he experienced abuse and harassment while in the performance of duty.

In separate undated statements received by OWCP on April 25, 2016, appellant alleged that the employing establishment allowed “mistreatment to fester,” that the system was broken, and that his tour bid was “botched.” He also alleged that he was denied coaching, leave requests, and resources to perform his work. As well appellant alleged that he was called names and felt his character was attacked, he was ostracized, his grievance process was mishandled, and he felt his complaints were ignored.

In a May 18, 2016 development letter, OWCP requested that appellant submit additional information in support of his claim. It explained that there was no factual evidence describing in detail incidents/events that occurred in the manner alleged. OWCP provided a questionnaire for his completion to describe in detail the employment-related conditions or incidents which he believed contributed to his emotional condition. It asked him to provide signed and dated witness statements from anyone who could verify his allegations. By separate letter of even date, OWCP also requested that the employing establishment respond to appellant’s allegations. It afforded 30 days for submission of additional evidence.

Appellant submitted additional statements dated June 16 and August 22, 2016. He asserted that the employing establishment failed to provide tuition assistance, service compensation dates, tour bids, reasonable accommodation, and failure to receive coaching.

The employing establishment responded on August 22 and October 7, 2016, and controverted appellant’s allegations.

By decision dated October 14, 2016, OWCP denied appellant’s emotional condition claim, finding that he had not met his burden of proof to establish compensable employment factors.

On November 15, 2016 OWCP received appellant’s request for a review of the written record by an OWCP hearing representative, which was postmarked November 10, 2015.

Appellant provided statements which were received by OWCP on November 16, 2016. His allegations included that he was invalidated by the workers’ compensation process because representatives treated him rudely, or ignored him. Appellant argued that he objected to the entire system because nobody listened.

An undated statement received on November 17, 2016, from appellant, included additional allegations that the employing establishment neglected issues, that he was denied resources, and that his leave requests were not processed in a timely fashion. In an additional statement, he alleged that the employing establishment forced him to work with substandard equipment.

OWCP received a reasonable accommodation request determination from the employing establishment dated October 28, 2015 which approved appellant for full-time telework. It also received additional evidence which included a National Archives record, grievance paperwork, a March 2, 2016 notice of rescission of an admonishment from the employing establishment, letters from OWCP responding to complaints from appellant, and appellant’s responses.

By decision dated March 17, 2017, OWCP's hearing representative affirmed the October 14, 2016 decision, finding that appellant had not met his burden of proof to establish an emotional condition in the performance of duty.

On March 19, 2018 appellant requested reconsideration. He argued that he was mistreated by the employing establishment. Appellant noted that his supervisor had indicated that there was no policy regarding break time and personal time usage, and concluded that he was therefore punished for a policy that did not exist. He argued that his due process rights were violated, his request for reasonable accommodation was ignored while he was sick, and his grievance was ignored. Appellant alleged that he was subjected to sexual harassment in May and June, 2017. He also reiterated his previous allegations. In addition, appellant provided OWCP with a copy of an accommodation request determination dated October 28, 2015, which had previously been received on November 23, 2016.²

By decision dated April 16, 2018, OWCP denied appellant's request for reconsideration, finding that appellant's statements were cumulative and substantially similar to previous statements or documentation already contained in the case file and previously considered.³

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.⁴ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁵ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.⁶

A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁷

² Although appellant asserted on his request for reconsideration that he was submitting additional new evidence not previously considered by OWCP, such new documentation is not of record.

³ OWCP noted that his March 13, 2018 statement contained new allegations of sexual harassment. It explained that he could file a new claim in regard to the new allegations.

⁴ This section provides in pertinent part: "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.607.

⁶ *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

⁷ 20 C.F.R. § 10.606(b)(3).

When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁸

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

In his request for reconsideration appellant restated arguments that he previously raised and which were considered by OWCP, including that his due process rights were violated, his request for reasonable accommodation was ignored, and his grievance was ignored. The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.⁹ Therefore, the Board finds that appellant is not entitled to a review of the merits based on the first and second requirements under section 10.606(b)(3).¹⁰

Appellant also submitted a copy of an accommodation request determination dated October 28, 2015, which had already been received by OWCP on November 23, 2016 and had previously been considered. The Board has held that evidence that either repeats or duplicates information already in the record does not constitute a basis for reopening a claim.¹¹

The Board finds, therefore, that appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or constitute pertinent new and relevant evidence not previously considered. As appellant did not meet any of the necessary regulatory requirements, he is not entitled to further merit review.¹²

On appeal appellant argues that the evidence submitted was not reviewed. However, as previously noted, the Board lacks jurisdiction over the merits of the case and appellant has not met any of the necessary regulatory requirements to warrant further merit review.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

⁸ *Id.* at § 10.608(a), (b).

⁹ *P.H.*, Docket No. 18-1020 (issued November 1, 2018); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

¹⁰ *Id.* at § 10.606(b)(3)(i) and (ii).

¹¹ *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

¹² 20 C.F.R. § 10.606(b)(3)(iii).

ORDER

IT IS HEREBY ORDERED THAT the April 16, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 1, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board